SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

BS172771 November 6, 2019
UPLIFT INGLEWOOD COALITION VS CITY OF INGLEWOOD ET AL 9:48 AM

Judge: Honorable Daniel S. Murphy
Judicial Assistant: Nancy DiGiambattista
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: HEARING ON PETITION FOR WRIT OF MANDATE RULING ON SUBMITTED MATTER

The court having taken the above matter under submission on November 5, 2019, now makes its ruling as follows:

Petitioner Uplift Inglewood Coalition ("Petitioner") petitions for a writ of mandate commanding The City of Inglewood, Inglewood City Council, Inglewood Housing Authority, and Inglewood Successor Agency (collectively "City") to come into compliance with Government Code sections 54220, et seq., 65008, and Health & Safety Code section 34413, by: (1) Following the disposition requirements set forth in Government Code Section 54220, et seq., including but not limited to, providing notice to the entities included in Government Code section 544222 regarding the availability of the properties identified in this litigation; (2) Adopting and implementing a Replacement Housing Plan for the units affordable to very-low income households that Respondents are obligated to replace due to redevelopment activity; and (3) Ceasing to discriminate against affordable housing in violation of Government Code section 65008. Petitioner also seeks an order voiding any exclusive negotiating agreement between City and Real Party in Interest Murphy's Bowl LLC ("Murphy's Bowl"). 1 (See Proposed Order; see also FAP pp. 27-28.) City and Murphy's Bowl jointly oppose the petition.

Judicial Notice

Petitioner's Request for Judicial Notice (RJN), Exhibits 1-11 – Granted.

City's and Murphy's Bowl's RJN Paragraph 1.a-u, 2.a-c, and 3.a – Granted.

Petitioner's Supplemental RJN Exhibits 1-5, 7, and legislative history – Granted.

Petitioner's Supplemental RJN Exhibit 6 – Denied.

Petitioner's Evidentiary Objections

Declaration of William H. Keller

Objection to Entire Declaration – Overruled

Specific Objections:

(1)-(20) – Overruled. (See Roberts v. Gulf Oil Corp. (1983) 147 Cal.App.3d 770, 782-783 [Court of Appeal relied on a "study of the legislative history" performed by "William Keller, a qualified expert analyst of legislative intent" to assist in matters of statutory interpretation]; Fallbrook Sanitary Dist. v. San Diego Local Agency Formation Com. (1989) 208 Cal.App.3d 753, 764 [citing Roberts, the Court stated: "expert evidence of [an] act's legislative history… is an appropriate means of assisting courts in understanding and interpreting statutes."].) The court considers Keller's declaration as expert evidence of the SLA's legislative history, not as a legal opinion for how the SLA should be interpreted.

Respondents' Evidentiary Objections

General Objections to Reply Evidence – Overruled. Arguably, Petitioner should have submitted, and briefed, all of its evidence with the moving papers to prove that the Property at issue is "surplus land" and also to support its interpretation of the meaning of "surplus land." Nonetheless, the court has discretion to consider reply evidence and arguments, and some of Petitioner's reply evidence could be viewed as "rebuttal." The court also finds insufficient evidence of prejudice to Respondents, who may respond to the reply evidence at the hearing. (Jay v. Mahaffey (2013) 218 Cal.App.4th 1522, 1537-38.)

Declaration of Michael Moynagh

(1) Overruled.
(2) Sustained.
(3) Overruled
(4) Overruled.

Declaration of Alan Greenlee

(5) Overruled.
(6) Overruled.

Declaration of Tori Kjer

(7) Overruled.

Documentary Evidence Submitted with Reply

(8) Overruled.
(9) Overruled.
(10) Overruled.
(11) Sustained.
(12) Overruled.
(13) Overruled.

Reply Declaration of Katherine McKeon

(14) Overruled.
(15) Overruled.
(16) Overruled.

Seal Records

Petitioner has lodged a redacted version of the Declaration of Katherine McKeon. Petitioner, City, and Murphy's Bowl have not made a motion to seal parts of McKeon's declaration.

California Rules of Court, Rule 2.550(d) provides that a Court may order a record to be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest. (CRC 2.550(d).) "The Court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties." 2 (CRC 2.551(a).)

At trial, Counsel for the parties stipulate that the entire McKeon declaration should be filed in the public record.

Factual and Legal Background

Uplift Inglewood Coalition

Petitioner Uplift Inglewood Coalition was founded in 2015 and consists of long-established Inglewood residents, businesses, faith groups, and community organizations working together to ensure that the vision of Inglewood's future includes and benefits all residents of Inglewood. (Scorza Decl. ¶ 4.) A key part of Petitioner's mission is to engage in community-centered development, secure housing for low-income residents of Inglewood, and advance policies that result in fair and equitable neighborhoods free of discrimination. (Id. ¶ 5.) Petitioner contends that City is exacerbating a lack of sufficient affordable housing and emergency shelters, including by executing an exclusive negotiating agreement with Murphy's Bowl to explore the sale of City lands for the possible development of an NBA arena. 3 (See Id. ¶ 7; Opening Brief (OB) 7.)

Murphy's Bowl ENA

At a special City Council meeting held June 15, 2017, City approved an exclusive negotiating agreement ("ENA") with Murphy's Bowl, a private entity, involving the potential sale of various parcels of land with the goal of building an NBA arena for the Los Angeles Clippers. (Joint Appendix ("JA") 1-50.) Some of the parcels of land are owned by City, and some are privately owned and would need to be obtained through eminent domain. (JA 23.) On August 15, 2017, City approved an amended ENA that curtailed, but did not eliminate, the City's ability to use eminent domain for the proposed project. (JA 24-47.)

The recitals to the ENA state in part:

B. The Developer has proposed development of a premier and state of the art [NBA] arena ...[¶¶]

E. [City] has selected and agreed to negotiate with the Developer for the potential conveyance and development of the Agency Parcels ... as a result of the Developer's affiliation with an NBA franchise that can be moved to the City ... and the Developer's experience and expressed commitment to expeditiously develop the Proposed Project ...

F. No entitlements ... for the development ... will be considered for approval ... until the requirements of this Agreement have been satisfied, including ... the approval of a Disposition and Development Agreement [DDA] ..., [and] compliance with CEQA ... (JA 25-26.)

The ENA includes an "exclusive negotiating period" defined as 36 months from the effective date. The ENA states that during the exclusive negotiating period City "shall not negotiate with or consider any offers or solicitations from, any person or entity, other than the Developer, regarding a proposed DDA for the sale, lease, disposition, and/or development of the City Parcels or Agency Parcels ...." (JA 27.) Among other obligations, the ENA required Murphy's Bowl to make a non-refundable deposit with City in the amount of $1,500,000. (JA 31.) The ENA contemplates that, during the exclusive negotiating period, City and Murphy's Bowl will discuss, among other things, the "Study Area Site" and the size, design, and location of the proposed Arena Project. (JA 24-26, 31-36.)

Section 6 of the ENA sets forth the parties' obligations to use "good faith efforts to negotiate and enter into a DDA" and sets forth some potential terms of a DDA. Section 6 also states that the parties "acknowledge that the following terms set forth a general outline ... and that the DDA will contain substantial additional terms which ... may differ ... and that nothing herein binds the Public Entities ...." (JA 32-34.) Section 7 states that execution of a DDA shall be subject to CEQA. (JA 36.)

Section 8 governs termination of the ENA. Among other provisions, section 8 states that either party may terminate if the other party "should materially fail to comply with and perform in a timely manner." (JA 36.)

Section 13 is titled "No Commitment to Approve DDA" and states in part: "The Developer acknowledges and agrees that nothing in this Agreement shall obligate the Public Entities to approve a DDA nor any proposed development within the Study Area Site or shall otherwise expressly or impliedly obligate the Public Entities to sell and/or lease any property or interests therein. The Developer further acknowledges and agrees that the approval of this Agreement and a DDA ... shall be in the sole and absolute discretion of the Public Entities." (JA 39.) Similar language is stated in section 25, titled "Effect of Agreement." (JA 43.)

City's Notice of Preparation

On February 20, 2018, City issued a Notice of Preparation of a Draft Environmental Impact

Report and Public Scoping Meeting (the "NOP"), which included a more detailed description of the Proposed Project. The NOP confirms that City intends to continue negotiations to sell City-owned and City Successor Agency-owned parcels identified in the ENA to Murphy's Bowl. (JA 77–85.) City's NOP describes the land for the Proposed Project:

The main portion of the Project Site is bounded by West Century Boulevard on the north, South Prairie Avenue on the west, South Doty Avenue on the east, and a straight line extending east from West 103rd Street to Doty Avenue to the south.... [The Project Site] ... totals approximately 27 acres.

All but five of the parcels that make up the Project Site are currently vacant or undeveloped. The vacant parcels within the Project Site total approximately 23 acres, more than 85 percent of the Project Site. The five developed parcels include a fast-food restaurant, a hotel, warehouse and light manufacturing facilities, and a groundwater well and related facilities. Most of the Project Site, approximately 84 percent, consists of parcels owned by the City of Inglewood and the City of Inglewood as Successor Agency to the Inglewood Redevelopment Agency. (AR 79.)

Surplus Land Act -- Overview

Petitioner contends that City violated the Surplus Land Act ("SLA") when it executed the ENA because it did not first make City-owned land available for the development of affordable housing, parks, or open space. (See OB 7.)

In the legislative declaration for the SLA, the Legislature "reaffirms ... that housing is of vital statewide importance to the health, safety, and welfare of the residents of this state and that provision of a decent home and a suitable living environment for every Californian is a priority of the highest order. The Legislature further declares that there is a shortage of sites available for housing for persons and families of low and moderate income and that surplus government land, prior to disposition, should be made available for that purpose." (Gov. Code § 54220.) 4

The SLA defines "surplus land" as "land owned by any local agency, that is determined to be no longer necessary for the agency's use, except property being held by the agency for the purpose of exchange." (§ 54221(b).)

Section 54222 provides the procedures to be followed when a local agency disposes of surplus land. In relevant part, this section provides:

Any local agency disposing of surplus land shall send, prior to disposing of that property, a written offer to sell or lease the property as follows:

(a) A written offer to sell or lease for the purpose of developing low- and moderate-income housing shall be sent to any local public entity, as defined in Section 50079 of the Health and Safety Code, within whose jurisdiction the surplus land is located. Housing sponsors, as defined by Section 50074 of the Health and Safety Code, shall be sent, upon written request, a written offer to sell or lease surplus land for the purpose of developing low- and moderate-income housing....
(b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent: ... [park, recreation, and related entities]
(c)–(e) [Written offers to sell or lease land suitable for school facilities or purposes, enterprise zone purposes, or infill development]
(f) The entity or association desiring to purchase or lease the surplus land for any of the purposes authorized by this section shall notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land.

"After the disposing agency has received notice from the entity desiring to purchase or lease the land, the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than 90 days, the land may be disposed of without further regard to this article, except that Section 54233 shall apply." (§ 54223.)

Further, with the exception of land already being used for park and recreational purposes, if the agency receives offers for purchase or lease "from more than one of the entities to which notice and an opportunity to purchase or lease shall be given," the agency "shall give first priority" to the entity that agrees to use the surplus land for affordable housing. (§ 54227(a).)

"The failure by a local agency to comply with this article shall not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value." (§ 54230.5)

Evidence that City and its Redevelopment Agency Acquired the Publicly Owned Parcels in the Proposed Arena Site for Noise-Compatibility and Economic Development Purposes

As discussed infra, City contends that the City lands that are part of the Proposed Arena Site are not surplus lands under the SLA, because City has an ongoing public use for the lands: "conversion into a noise-compatible, revenue-generating development." (Oppo. 22.) In support,

City submits the following evidence.

Inglewood sits adjacent to LAX, and several flight paths cross over portions of the City. (See JA 673.) The City has been working to eliminate or reduce residential uses in areas impacted by aircraft noise for more than 35 years. (Wolken Decl. ¶¶ 16-28; JA 931-935.) In the early 1980s, the City identified several residential areas for redevelopment, including what is now the Proposed Arena Site. (Wolken Decl. ¶¶ 13-15; Jackson Decl. ¶ 14.) As detailed in the accompanying declaration of Alan Wolken, a former planner and project manager for the City's Redevelopment Agency, these areas were heavily impacted by aircraft noise and, as a result, had experienced residential instability, physical deterioration, and blight. (Wolken Decl. ¶¶ 15-18; see also JA 1505.) A key goal of the City's redevelopment efforts was the removal of incompatible residential uses and the conversion of these areas to noise-compatible commercial, industrial, or other revenue-generating uses. (Wolken Decl. ¶¶ 24-25; Jackson Decl. ¶¶ 15-16; JA 1217.)

City Acquired the Parcels in the Proposed Arena Site with FAA and LAWA Funds

In the early 1980s, the FAA published guidelines to encourage local jurisdictions and airports to abate the impact of aircraft noise by adopting voluntary airport compatibility planning programs (known as "Part 150" programs). (Maurice Decl. ¶¶ 37-38.) A few years later, the governing body for LAX, the Los Angeles Department of Airports (later, Los Angeles World Airports, or LAWA) approved a Part 150 program for LAX, based on a multi-year, FAA-funded Airport Noise Control/Land Use Compatibility Study conducted with participation from airport adjacent communities like Inglewood. (Wolken Decl. ¶ 27; JA 911.) As part of this effort, the FAA and LAWA funded grants for noise-mitigation efforts in communities beneath airport flight paths—including grants for acquiring residential properties, and converting them to noise-compatible commercial or industrial uses (the "land recycling" program). (Wolken Decl. ¶¶ 28-29; Jackson Decl. ¶ 15; see also Maurice Decl. ¶¶ 39-42.)

In the mid-1980s, the City began receiving grants from the FAA and LAWA for its land recycling program. (Wolken Decl. ¶¶ 28-29.) In exchange, the City agreed that it would carry out the purpose of the grants: recycling the acquired land from incompatible residential use into noise-compatible uses, and preventing incompatible uses from returning to the land. (Id. ¶¶ 30-31.) The terms of the City's grant agreements with the FAA are set forth in the accompanying declaration of Dr. Lourdes Maurice, the former Executive Director for the FAA's Office of Environment and Energy. (Maurice Decl. ¶¶ 3, 44-51, 67-68; JA 743-752; see also, e.g., JA 446-456.)

The City used FAA and LAWA grant funding to acquire approximately 60 of the 65 City owned parcels in the Proposed Arena Site that are the subject of this litigation. (See e.g. JA 435- 441.) The remaining parcels were acquired with redevelopment funds for the same purpose of noise-compatibility development. (Ibid.; see Wolken Decl. ¶¶ 25-26.) Drawing on these funds, the City acquired residential properties, relocated tenants, demolished existing buildings, and marketed the properties to developers. (Wolken Decl. ¶¶ 34-41; see also JA 1521.) In conjunction with these efforts, the City amended its General Plan to change the designation for the Proposed Arena Site from residential to industrial/commercial to ensure that noise-sensitive uses would not return to this severely noise-impacted area. (Wolken Decl. ¶¶ 21-23, 31; see JA 776.) Altogether, from 1985 to 2006, the FAA and LAWA invested nearly $120 million towards the City's land-recycling program, and roughly 180 parcels were acquired with FAA and LAWA funds. (Jackson Decl. ¶ 15, fn. 2; JA 671.)

City's Unsuccessful Efforts to Redevelop the Proposed Arena Site

Many of the parcels the City acquired through its land-recycling program have been successfully redeveloped into commercial or industrial uses. (Wolken Decl. ¶¶ 42-44; Jackson Decl. ¶ 17; JA 671-672.) The Proposed Arena Site, however, has been the subject of sustained, but unsuccessful, efforts to put the land to a noise-compatible industrial or commercial use. (See Wolken Decl. ¶¶ 46-52; Jackson Decl. ¶¶ 21-38; JA 1212, 1094, 2046.)

In 2012, the City entered into a lease with MSG Forum, LLC ("MSG"), the owner of the Forum, which allowed the Forum to use the vacant parcels for overflow event parking. (Jackson Decl. ¶ 39.) The lease, which covered almost the entire Proposed Arena Site, gave MSG the option to purchase the land for $6.9 million. (Id. ¶ 40.) MSG agreed that if it were to exercise its option, it would work with the City to attract a commercial development to the land. (Ibid.) MSG and the City terminated the parking lease in 2017. MSG did not exercise its purchase option. (Id. ¶ 42; JA 105-108.)

Petitioner's Reply Evidence that City Has Approved New Residential Development in the 65 Decibel Noise Contour

The federally established threshold of aviation noise significance in the United States is 65 decibel (dB) Day-Night Average Sound Level (DNL). 5 (Maurice Decl. ¶¶ 24-28.) City submits some evidence that it has a "policy and practice to prevent the construction of new residential uses within the 65 dB aircraft noise contour whenever possible." (Griffith Decl. ¶ 14 [emphasis

added].) In reply, Petitioner cites evidence that City has approved some residential development that falls partially or entirely within a 65 dB or greater noise contour. (Reply 24-25; Bonett Reply Decl. ¶ 8; McKeon Reply Decl. ¶¶ 13-16; JA 2671-2732.)

Procedural History

On June 19, 2018, Petitioner filed its original petition for writ of mandate. Murphy's Bowl and City answered. The parties stipulated that Petitioner could file a first supplemental petition. On February 28, 2019, Petitioner filed the operative, first supplemental verified petition for writ of mandate and complaint for declaratory and injunction relief ("petition" or "FAP"). The petition includes the following causes of action: (1) writ of mandate – compel compliance with the Surplus Land Act; (2) writ of mandate – Housing Element Law; (3) writ of mandate – CRL Replacement Obligation; (4) writ of mandate – Land Use Non-Discrimination Law (Gov. Code § 65008(b)(1)(C)); (5) permanent injunction ceasing violation of Fair Employment and Housing Act; and (6) declaratory relief.

At the trial setting conference, held September 27, 2018, the court stayed the fifth and sixth causes of action, which are non-writ causes of action, until the writ causes of action are resolved.

On April 25, 2019, the court overruled Murphy's Bowl's demurrer to the petition and denied its motion to strike. The court granted City's motion to strike in part, and denied City's motion in all other respects.

City answered on May 6, 2019. Murphy's Bowl answered on May 14, 2019.

On September 3, 2019, Petitioner filed its opening brief in support of the writ petition. On October 11, 2019, City and Murphy's Bowl filed their joint opposition. On October 24, 2019, Petitioner filed its reply. The court has received the parties' declarations, requests for judicial notice, joint appendix, legislative history on USB drive, and joint appendix on USB drive.

On October 15, 2019, the court granted the application of California Department of Finance to file an amicus curiae brief, which was filed that same date.

Standard of Review

There are two essential requirements to the issuance of an ordinary writ of mandate under Code of Civil Procedure section 1085: (1) a clear, present and ministerial duty on the part of the

respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty. (California Ass'n for Health Services at Home v. Department of Health Services (2007) 148 Cal.App.4th 696, 704.) "An action in ordinary mandamus is proper where … the claim is that an agency has failed to act as required by law." (Id. at 705.)

"Normally, mandate will not lie to control a public agency's discretion, that is to say, force the exercise of discretion in a particular manner. However, it will lie to correct abuses of discretion. In determining whether a public agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld. A court must ask whether the public agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires." (County of Los Angeles v. City of Los Angeles (2013) 214 Cal.App.4th 643, 654.)

"'On questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment.' …. Interpretation of a statute or regulation is a question of law subject to independent review." (Christensen v. Lightbourne (2017) 15 Cal.App.5th 1239, 1251.)

An agency is presumed to have regularly performed its official duties. (Evid. Code § 664.) The petitioner "bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085." (California Correctional Peace Officers Assn. v. State Personnel Bd. (1995) 10 Cal.4th 1133, 1154.)

ANALYSIS

First Cause of Action – Surplus Land Act

Petitioner contends that City violated the SLA because it demonstrated "clear intent" to dispose of the public parcels in the Proposed Arena Site ("Property"), and City did not first offer the Property to statutorily prioritized SLA entities ("SLA Entities"). (OB 17.) Respondents present a different interpretation of the SLA, as analyzed below.

The parties raise several issues of statutory construction. "The rules governing statutory construction are well settled. We begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent. [Citations.] To determine legislative intent, we turn first to the words of the statute, giving them their usual and ordinary meaning. [Citations.] When the language of a statute is clear, we need go no further. However,

when the language is susceptible of more than one reasonable interpretation, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (Nolan v. City of Anaheim (2004) 33 Cal.4th 335, 340.)

When interpreting a statute, the court must construe the statute, if possible to achieve harmony among its parts. (People v. Hall (1991) 1 Cal. 4th 266, 272; Legacy Group v. City of Wasco (2003) 106 Cal.App. 4th 1305, 1313). "When interpreting statutory language, we may neither insert language which has been omitted nor ignore language which has been inserted." (See People v. National Auto. and Cas. Ins. Co. (2002) 98 Cal.App.4th 277, 282.)

In the analysis below, the court interprets the SLA only for the specific facts and circumstances of this case.

May "Surplus Land" Include Property Held by Agency for Economic Development or Noise-Compatibility Redevelopment?

Petitioner contends that the Property is "surplus land" under the SLA because City has shown, by entering the ENA, that the Property "is no longer necessary for [its] use." (OB 19; see also OB 12-13.) Respondents, in contrast, contend that the "agency's use" under the SLA may include "transferring [land] to a particular buyer for a particular public use, such as economic development or noise-compatibility." (Oppo. 21-22; see Id. 23-31.) As discussed in greater detail below, Respondents present evidence to show that City holds the Property for such purposes.

Plain Language

The SLA defines "surplus land" as "land owned by any local agency, that is determined to be no longer necessary for the agency's use, except property being held by the agency for the purpose of exchange." (§ 54221(b).) The statue provides a list of "exempt surplus land," including "Surplus land that is (A) less than 5,000 square feet in area, [or] (B) less than the minimum legal residential building lot size for the jurisdiction in which the parcel is located, or 5,000 square feet in area, whichever is less...." (§ 54221(e).) Section 54222 provides that "any local agency disposing of surplus land shall send, prior to disposing of that property, a written offer to sell or lease the property" to the SLA Entities.

Petitioner interprets the phrase "agency's use" narrowly to require a direct governmental use of the property, such as for governmental operations. (See Reply 10-15.) Petitioner also seems to

argue that any land an agency decides to sell is "surplus." (OB 19.) Although Petitioner's interpretation is plausible, it is not strongly supported by the plain language. The operative version of the SLA does not define "agency's use." 6 Nor does the statue define the manner in which the agency "determines" that its land is no longer necessary for the agency's use. If the legislature had intended to impose narrow restrictions on the agency's use that would qualify, it would have stated so explicitly. Moreover, the legislature vested the agency with discretion to "determine" whether public lands remain necessary for the agency's use, which is more consistent with a broad interpretation of "agency's use." Finally, if all City-owned land subject to potential disposition is "surplus," then there would be no need for the legislature to have defined "surplus land." Thus, Petitioner's interpretation violates the rule that ""[c]ourts ... should avoid a construction making any word surplusage." (Big Creek Lumber Co. v. County of Santa Cruz (2006) 38 Cal.4th 1139, 1155.)

Citing takings cases, Respondents interpret "agency's use" to include property held for transfer to private parties for economic and/or noise-compatible development that serves a public purpose. (Oppo. 23-25.) "Promoting economic development is a traditional and long-accepted function of government." (Kelo v. City of New London, Conn. (2005) 545 U.S. 469, 484-485.) In the takings context, "there is no basis for exempting economic development from [the Court's] traditionally broad understanding of public purpose." (Ibid.) Kelo and other cases cited in opposition did not arise under the SLA. However, they reflect cities' historically broad discretion to pursue economic development as a "legitimate public purpose." Absent a legislative restriction on the permissible "agency's use," it may be reasonable to interpret the definition of "surplus land" in the SLA to include property held by the agency for specific public purposes, including economic development or noise-compatible development.

Petitioner asserts that Respondents' interpretation would render the SLA "toothless," since agencies could "always opt out of the SLA by simply claiming benefit from the transfer to a private party." (Reply 13; see Pacific Gas & Electric Co. v. Hart High-Voltage Apparatus Repair & Testing Co., Inc. (2017) 18 Cal.App.5th 415, 429 ["literal construction will not control when it frustrates manifest purpose of enactment as a whole" or "results in absurd consequences"].) The court is not persuaded by this concern. An agency's exercise of discretion that land remains useful to the agency may still be reviewed under the arbitrary and capricious standard. (See Mooney v. Garcia (2012) 207 Cal.App.4th 229, 235.) Moreover, the court need not decide whether "surplus land" under the SLA may include land held simply for sale. As discussed further below, sufficient evidence supports City's determination in this case that the Property remains necessary for economic and/or noise-compatible development.

Respondents assert the stronger interpretation of the plain language of "surplus land" in the operative SLA. However, the court finds ambiguity, specifically with regard to the meaning of "agency's use," and will consider legislative history and other extrinsic aids. 7

Legislative History

In the opening brief, Petitioner, which has the initial burden in this writ action, does not discuss legislative history that would shed light on the meaning of "surplus land" or "agency's use" in the SLA. (See OB 12-15, 19-20.)

In opposition, Respondents rely on the declaration of attorney William Keller as a "legislative expert." (Oppo. 26.) "[E]xpert evidence of [an] act's legislative history... is an appropriate means of assisting courts in understanding and interpreting statutes." (Fallbrook Sanitary Dist. v. San Diego Local Agency Formation Com. (1989) 208 Cal.App.3d 753, 764; see Roberts v. Gulf Oil Corp. (1983) 147 Cal.App.3d 770, 782-783 [Court of Appeal relied on a "study of the legislative history" performed by Keller].) The court considers Keller's declaration as expert evidence of the SLA's legislative history, not as a legal opinion for how the SLA should be interpreted. Keller's discussion of the legislative history of the SLA generally supports Respondents' interpretation of the terms "surplus land" and "agency's use." For instance, the legislative history confirms that the SLA "is limited to disposals of surplus land, not disposal of any land." (Keller Decl. ¶¶ 38-42.) Consistent with the plain language, the legislative history suggests that the agency has broad discretion to determine whether land is no longer necessary for its use. (Id. ¶¶ 43-50; see also Moynagh Decl. ¶ 17.)

In reply, Petitioner cites some legislative history that arguably supports its interpretation. (See Reply 12-15; see Moynagh Decl. ¶¶ 15-16, citing JA 2165, 2707.) A 2003 Senate Floor Analysis regarding AB 1410 stated the following: "Public agencies are major landlords in some communities, owning significant pieces of real estate. When properties become surplus, public officials want to sell the land to recoup their investments. State law requires state departments and local governments to give a 'first right of refusal' to other governments and some nonprofit groups. The statute's implicit public policy is that real property should remain in public ownership if it's still useful for certain favored purposes." (JA 2165.) However, AB 1410 did not make any changes to the definition of "surplus land." Therefore, this statement does not necessarily show the legislative intent in that definition. Petitioner's citation to a 2014 assembly committee analysis for SB 2135 is not dispositive for the same reason. (See Moynagh Decl. ¶ 16.)

The legislative history more strongly supports City's and Murphy's Bowl interpretation of the definition of "surplus land" in the SLA. If the legislature had intended to define "surplus land" to include land an agency holds for economic development, that presumably would have been shown in the legislative history for the statute that enacted the definition of "surplus land."

Recent Amendment to SLA

Respondents contend that recent amendments to the SLA, in AB 1486 enacted in October 2019, support their interpretation of the current SLA. (Oppo. 26-28.)

On a prospective basis 8, AB 1486 changes the definition of "surplus land," as follows:

As used in this article, the term "surplus "Surplus land" means land owned in fee simple by any local agency, that is determined to be no longer for which the local agency's governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency's use, except property being held by the agency for the purpose of exchange. . .

(JA 2266 at 2273; § 54221(b)(1) of AB 1486.) The bill also provides a definition of "agency's use":

(c)(1) Except as provided in paragraph (2), "agency's use" shall include, but not be limited to, land that is being used, is planned to be used pursuant to a written plan adopted by the local agency's governing board for, or is disposed to support pursuant to subparagraph (B) of paragraph (2) agency work or operations, including, but not limited to, utility sites, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants.

(2)(A) "Agency's use" shall not include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development. Property disposed of for the sole purpose of investment or generation of revenue shall not be considered necessary for the agency's use.

(JA 2274, § 54221(c)(2) of AB 1486.)

Petitioner argues that AB 1486 simply clarified the existing definition of "surplus land." (See

Reply 16-17.) The court disagrees. "A substantial change in the language of a law generally infers an intent to change its meaning." (Pacific Intermountain Express v. National Union Fire Ins. Co. (1984) 151 Cal.App.3d 777, 781.) "Although a substantial change in language generally indicates intent to change a law, surrounding circumstances may show that the amendment was merely a clarification of existing law." (Ibid.)

The changes to the definition of "surplus land" were both detailed and substantial. The legislature for the first time gave a specific definition of "agency's use," and specifically excluded commercial and industrial uses. The legislature also for the first time specified that an agency must take formal action in a regular public meeting to declare that land is surplus. Further, the legislature expressly omitted existing agreements, like the ENA, from the new statue. (See § 54234(a) of AB 1486.) Section 54234(a)(1) of AB 1486 expressly refers to "changes" made by the new law, not clarifications. The plain language of AB 1486 suggests that the amendments and additions to the definition of "surplus land," quoted above, were changes and not clarifications.

Petitioner does not show that the surrounding circumstances or legislative history of AB 1486 show that the amendments to "surplus land" were merely clarifications. Petitioner's citations to the legislative history do not show specific discussion of the amendments of the definition of "surplus land" at issue. (See Reply 16-17; see Moynagh Decl. ¶ 24; JA 2642, 2200-01.) Moreover, the legislative history, as well as the legislative counsel's digest, state that AB 1486 would "revise" the definition of "surplus land". (See e.g. JA 2274, 2198, 2187.) The word "revise" suggests changes to the law, not clarifications.

Somewhat in conflict with its argument that AB 1486 "clarifies" the law, Petitioner also argues that AB 1486 may not be used to interpret the current version of the SLA. (Reply 15-16.) Petitioner cites the exemption of existing agreements like the ENA. (See § 54234(a) of AB 1486.) While AB 1486 expressly does not apply to the ENA, the changes in AB 1486 may be considered by the court as a factor when interpreting the current definition of "surplus land." (See McClung v. Employment Development Dept. (2004) 34 Cal.4th 467, 473 ["'a legislative declaration of an existing statute's meaning' is but a factor for a court to consider and 'is neither binding nor conclusive in construing the statute.'"].)

The amendments to the definition of "surplus land" in AB 1486, including the definition of "agency's use" and the express exclusion of "commercial or industrial uses," support Respondents' interpretation of the current SLA. These amendments would not have been necessary if the current SLA defined surplus land to include property that an agency holds for

purposes of economic development or similar uses.

Conflict with Other Federal or State Law

Respondents contend that Petitioner's interpretation of the SLA conflicts with other state and federal laws, specifically (1) the federal Airport and Airway Improvement Act of 1982 and express conditions upon which City received grant funding for its land recycling program; and (2) the Redevelopment Dissolution Act. (Oppo. 33-37.) Section 54266 of the SLA provides that "no provision of this article shall be applied when it conflicts with any other provision of statutory law."

For purposes of statutory construction of the SLA, the court finds it unnecessary to decide whether Petitioner's interpretation conflicts with other federal or state law. In its abuse of discretion analysis below, the court considers the evidence that City received FAA grant funding based on a condition to dispose of the land in a manner to maintain its noise compatibility and prevent incompatible development. (See Oppo. 34; JA 478-479, 444.)

Summary – Definition of "Surplus Land"

In summary, SLA is ambiguous as to the meaning of "agency's use" or the steps an agency must take to determine that property is "surplus land." Nonetheless, Respondents assert the more persuasive interpretation of the plain language of the SLA, which is also supported by legislative history and recent amendments in AB 1486. Specifically, in proper circumstances, as discussed further below, an agency may determine under the SLA that its "use" of public land includes redevelopment for economic and noise-compatibility development purposes.

Timing of SLA Duties

Petitioner contends that SLA obligations are triggered when a local agency "expresses an intent to dispose of the land," which may include "some official action … which suggests that it no longer intends on retaining the land." (OB 13-14.) Petitioner interprets the SLA to grant rights to SLA Entities "akin to a right of first offer." (OB 13.) Respondents disagree. Even if the Property is "surplus land," Respondents contend that SLA obligations are not triggered by "mere negotiations," such as in the ENA. (Oppo. 37-42.)

Plain Language

The pertinent language of the SLA states that "any local agency disposing of surplus land shall send, prior to disposing of that property, a written offer to sell or lease the property" to the statutory entities entitled to notice. (§ 54222.) The legislature's use of the word "disposing" suggests that the agency will have decided to sell surplus land and be somewhere along the process of disposing of the land. However, the SLA is silent on the exact timing of when the notice and negotiations must take place.

Significantly, "[t]he failure by a local agency to comply with [the SLA] shall not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value." (§ 54230.5) Therefore, the transfer of the property cannot be the triggering event for the agency's mandatory duty of notice and negotiations. Otherwise, the SLA would be unenforceable.

The "disposing" language from section 54222 could potentially be read to apply when the agency manifests its intent to sell surplus land, as Petitioner argues. (OB 13-14.) However, Petitioner does not point to any language in the SLA that defines what types of agency actions manifest or show such intent. As argued by Respondents, Petitioner's "manifestation of intent" standard is problematic because it would require a fact-driven determination of whether specific actions taken by an agency – such as negotiations – manifests intent to sell the property. (Oppo. 41.) Presumably, Petitioner's interpretation would require courts to make this fact determination. Further, in the current SLA, the legislature provided no standards for the courts to apply in assessing whether an agency has shown intent to sell property.

Respondents argue that the absence of any clear standard shows that the legislature intended to vest discretion in the agency to determine when to send the required notice to SLA Entities, as long as it occurs "prior to disposing" of the surplus land. Respondents state that an agency "has no clear, present and ministerial SLA duties until it has actually—and finally—decided to dispose of its surplus land." (Oppo. 37-38.) Presumably, an agency would make an announce of that decision in a public meeting.

Petitioner argues strenuously that the current SLA grants the SLA Entities a right of first offer. Respondents contend that the SLA grants a right of first refusal to SLA Entities. (See OB 13; Oppo. 40-41; Reply 20-21.) The parties provide no clear evidence that the legislature intended in the current SLA to grant SLA Entities either a right of first offer or a right of first refusal.

Because of the lack of clear standards and problems with enforceability, the court is not persuaded by Petitioner's "manifestation of intent" interpretation of the current SLA. It appears that the current SLA intended to leave the exact timing and structure of SLA negotiations to the

discretion of the agency disposing of surplus land. The court finds the current SLA to be ambiguous with respect to the timing of when the SLA notice and negotiations must take place. Thus, the court considers the legislative history and other extrinsic aids.

Legislative History

Petitioner cites to parts of the legislative history from the 1974 amendments of the SLA (SB 2396), which extended the SLA to development of low and middle income housing. (OB 14-15.) For instance, an analysis of SB 2396 states:

Section 54222 ... currently requires any state or local agency contemplating disposal of surplus public property to first notify city and county parks and recreation departments .... [¶]

SB 2396 would require that selling agencies also notify applicable housing authorities when the surplus property would be suitable for low or middle income housing.... If no agency were interested, existing law provides for disposal at public auction.... (JA 341 [emphasis added].)

This analysis also discusses Orange County's practice (in 1974) under which the agency first sends out a "Notice of Availability" to government jurisdictions where the parcel is located and then, "if they receive no offers, they make a second mailing to interested private persons." (Ibid.) While consistent with Petitioner's interpretation, this analysis does not resolve when SLA duties are triggered. Moreover, Petitioner cites to a legislative declaration of the existing statute's meaning, which is not conclusive evidence of the legislative intent. (See McClung v. Employment Development Dept. (2004) 34 Cal.4th 467, 473.) The court does not find this legislative history to be conclusive evidence of the legislative intent with respect to the timing of when the SLA notice and negotiations must take place.

Respondents cite to statements in the legislative history that describe the right of SLA Entities as a right of first refusal. (Oppo. 40; see JA 2143, 2162, 2221; Keller Decl. ¶¶ 51-58.) As noted in reply, one of Respondents' citations also could be interpreted to describe a right of first offer. (Reply 20:20-26; see JA 2162.) Although the legislative history does not show that a right of first refusal is required in SLA negotiations, it is consistent with Respondents' interpretation of the current SLA, under which a right of first refusal may be used at the agency's discretion.

Recent Amendment to SLA

Recent amendments in AB 1486 suggest that mere negotiations do not trigger SLA requirements

under the current SLA. (See Oppo. 39-40.) The Legislative Counsel's Digest to AB 1486 notes:

Existing law requires a local agency disposing of surplus land to send, prior to disposing of that property, a written offer to sell or lease the property to specified entities.... This bill would instead require, except as provided, the local agency disposing of surplus land to send, prior to disposing of that property or participating in negotiations to dispose of that property with a prospective transferee, a written notice of availability. (JA 2268; see AB 1486.)

Section 54222 of the SLA is amended by AB 1486 to state: "Except as provided in Division 23 (commencing with Section 33000) of the Public Resources Code, any local agency disposing of surplus land shall send, prior to disposing of that property or participating in negotiations to dispose of that property with a prospective transferee, a written notice of availability of the property..." to SLA Entities. (§ 54222 of AB 1486.)

The italicized amendment above is not a clarification of existing law. Rather, it is a substantial change to the triggering event for SLA obligations. Although not conclusive, these recent amendments to the SLA support Respondents' interpretation. It would have been unnecessary for the legislature to add this language if the current SLA could be interpreted to require SLA notice and negotiations when the disposing agency enters negotiations with a private party to sell the property.

Summary – Timing of SLA Duties

Based on the foregoing, the court finds Respondents' interpretation of the SLA to be more persuasive. The current SLA vests discretion in the agency to determine when to engage in SLA notice and negotiations, as long as it complies with the SLA "prior to disposing" of the land. The agency must exercise that discretion reasonably, and not in an arbitrary or capricious manner that defeats the purpose of the SLA. The agency would not necessarily be required by the current SLA to provide SLA notice and negotiations during negotiations with a private third party.

Application to this Case

Based on the statutory construction provided above, the court next determines whether Petitioner has shown that the City has a clear, present, and ministerial duty to offer the Property to SLA Entities. The court must also decide whether Petitioner has shown an abuse of discretion.

"'A ministerial act is an act that a public officer is required to perform in a prescribed manner in

obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists. Discretion, on the other hand, is the power conferred on public functionaries to act officially according to the dictates of their own judgment.'" (County of Los Angeles v. City of Los Angeles (2013) 214 Cal.App.4th 643, 653-54.)

City's Determination that the Property is Not Surplus Land

As discussed above, the current SLA vests discretion in City to determine whether the Property is "no longer necessary" for its use. (§ 54221.) Based on its opposition, City has evidently determined that the Property is not surplus land. The court reviews that determination for abuse of discretion. Under this standard, the "court must ask whether the public agency's action was arbitrary, capricious, or entirely lacking in evidentiary support." (County of Los Angeles v. City of Los Angeles (2013) 214 Cal.App.4th 643, 654.)

City contends that the Property are not surplus land because City has an ongoing public use for the lands: "conversion into a noise-compatible, revenue-generating development." (Oppo. 22.) City submits evidence of the following. Inglewood sits adjacent to LAX, and several flight paths cross over portions of the City. (See JA 673.) In the early 1980s, the City identified several residential areas for redevelopment, including what is now the Proposed Arena Site. (Wolken Decl. ¶¶ 13-15; Jackson Decl. ¶ 14.) These areas were heavily impacted by aircraft noise and, as a result, had experienced residential instability, physical deterioration, and blight. (Wolken Decl. ¶¶ 15-18; see also JA 1505.) A key goal of the City's redevelopment efforts was the removal of incompatible residential uses and the conversion of these areas to noise-compatible commercial, industrial, or other revenue-generating uses. (Wolken Decl. ¶¶ 24-25; Jackson Decl. ¶¶ 15-16; JA 1217.)

Starting in the 1980s, the FAA and LAWA funded grants for noise-mitigation efforts in communities beneath airport flight paths—including grants for acquiring residential properties, and converting them to noise-compatible commercial or industrial uses (the "land recycling" program). (Wolken Decl. ¶¶ 28-29; Jackson Decl. ¶ 15; see also Maurice Decl. ¶¶ 39-42.) The City used FAA and LAWA grant funding to acquire approximately 60 of the 65 City owned parcels in the Proposed Arena Site that are the subject of this litigation. (See e.g. JA 435- 441.) The remaining parcels were acquired with redevelopment funds for the same purpose of noise-compatibility development. (Ibid.; see Wolken Decl. ¶¶ 25-26.) The City amended its General Plan to change the designation for the Proposed Arena Site from residential to industrial/commercial to ensure that noise-sensitive uses would not return to this severely noise-

impacted area. (Wolken Decl. ¶¶ 21-23, 31; see JA 776, 932, 1378.)

As part of the land-recycling program, the City agreed that it would carry out the purpose of the grants: recycling the acquired land from incompatible residential use into noise-compatible uses, and preventing incompatible uses from returning to the land. (Wolken Decl. ¶¶ 30-31.) As an express condition of receiving FAA funding, City agreed that it would dispose of the land in a manner to maintain its noise compatibility and prevent incompatible development. (JA 478-479; see also Maurice Decl. ¶¶ 3, 44-51, 67-68; JA 743-752; see also, e.g., JA 444-456.)

Many of the parcels the City acquired through its land-recycling program have been successfully redeveloped into commercial or industrial uses. (Wolken Decl. ¶¶ 42-44; Jackson Decl. ¶ 17; JA 671-672.) The Proposed Arena Site, however, has been the subject of sustained, but unsuccessful, efforts to put the land to a noise-compatible industrial or commercial use. (See Wolken Decl. ¶¶ 46-52; Jackson Decl. ¶¶ 21-38; JA 1212, 1094, 2046.)

Respondents submit evidence that offering parcels in the Project Arena Site for housing or school uses would be inconsistent with the City's grant assurances. (See Maurice Decl. ¶¶ 69-72.) Dr. Maurice, who worked for the FAA for 15 years, opines that the FAA would be unlikely to continue funding land-recycling projects of a local government that violated its grant assurances by allowing housing and schools to be built on noise-impacted land. (Maurice Decl. ¶ 72.) On August 17, 2019, the FAA confirmed that it would oppose the reintroduction of residential uses in the Proposed Arena Site. (JA 444.) The FAA wrote in its letter:

These AIP grants required the City to remove residents from the Noise-Impacted Parcels (which the City has done) and to ensure future land-use compatibility with LAX noise impacts....

[T]he proposed NBA basketball arena project appears to be a compatible land-use for the Noise-Impacted Parcels....

[T]he FAA does not support the reintroduction of single-family or multi-family residential uses on the Noise-Impacted Parcels. Such residential redevelopment would increase residents' exposure to aircraft noise, and is inherently inconsistent with the intent of the City's land acquisition/noise mitigation program, approved and funded by the FAA. (JA 444.)

For the most part, Petitioner does not challenge or rebut this evidence in reply. Petitioner contends that FAA regulations leave land use in the hands of local government, and the grant assurances do not "prohibit" residential development on the Property. Petitioner contends that

FAA regulations permit residential development in noise contours of up to 75 dB as long as appropriate sound insulation is used. (Reply 21-23.) Petitioner cites evidence that City has approved some residential development that falls partially or entirely within a 65 dB or greater noise contour. (Reply 24-25; Bonett Reply Decl. ¶ 8; McKeon Reply Decl. ¶¶ 13-16; JA 2671-2732.) City does not contend that it never permits housing in the 65 dB noise contour. Moreover, even if residential uses are not strictly prohibited on the Project Arena Site and noise could be mitigated with insulation, City could reasonably conclude, including based on the August 17, 2019 FAA letter, that residential or school uses are inconsistent with the FAA grant assurances and City's land-recycling program.

Petitioner contends that SLA Entities, not the City, determine whether potential development is suitable for land offered under the SLA. (Reply 21, 23-24.) Even if true, this argument does not respond to the issue of whether City abused its discretion in determining that the Property is not surplus land. While Petitioner states that SLA Entities are not restricted to housing developers, Petitioner cites no evidence that outdoor parks or similar uses would be protected from LAX noise. (Reply 21.)

Petitioner states that "noise compatibility is not an actual use of property; rather, it is a way to protect the inhabitants of the property… from noise." (Reply 23.) Although noise compatibility may not be a "use" in itself, it is undisputed that the Property consists of "noise-impacted parcels." (See e.g. JA 444.) City's obligation to "ensure future land-use compatibility with LAX noise impacts" is inherently intertwined with the use and development of the Property.

For this writ petition, there is compelling evidence that the Property was acquired by City as part of a long-standing land-recycling program to address negative impacts of aircraft noise from LAX, including residential instability, physical deterioration, and blight. (Wolken Decl. ¶¶ 15-18; see also JA 1505.) A key goal of the City's redevelopment efforts was the removal of incompatible residential uses and the conversion of these areas to noise-compatible commercial, industrial, or other revenue-generating uses. (Wolken Decl. ¶¶ 24-25; Jackson Decl. ¶¶ 15-16; JA 1217.) Many of the parcels were purchased with FAA and LAWA grant funding and are subject to FAA grant assurances that discourage residential uses and could be inconsistent with development by SLA Entities. Under these circumstances, City did not abuse its discretion in determining that the Property remains "necessary for the agency's use" and is not surplus land.

The ENA Has Not Triggered Mandatory Duties under the SLA

Even if the Property was surplus land, Petitioner has not shown that the ENA triggered clear,

present, and ministerial duties under the SLA or that City has abused its discretion. As discussed above, the current SLA is silent on the exact timing of when the SLA notice and negotiations must take place, and it appears to vest discretion in the "disposing" agency. The court need not decide the exact moment when an agency's SLA obligations become mandatory. As long as the agency complies "prior to disposing" of the property, there may be a range of time in which it can give notice to SLA Entities.

In this case, the ENA does not authorize the disposition of property: "[N]othing in this Agreement shall obligate the Public Entities to approve a DDA nor any proposed development within the Study Area Site or shall otherwise expressly or impliedly obligate the Public Entities to sell and/or lease any property or interests therein." (JA 39.) Petitioner, which has the burden, cites no evidence that City has made a final determination to sell the Property. Even under Petitioner's "manifestation of intent" standard, the ENA is not conclusive evidence of an intent to sell the Property. Rather, the ENA is evidence of City's intent to negotiate with Murphy's Bowl in good faith over an extended period. While there is evidence that City and Murphy's Bowl are negotiating in good faith, that does not foreclose the possibility that either or both will decide not to continue with the Arena Project.

Petitioner contends that the ENA prevents compliance with the SLA's requirements. (OB 20-21; Reply 18-19.) Specifically, Petitioner contends that the 36-month exclusive negotiating period and the requirement of good faith negotiations in the ENA make it impossible for City to enter good faith negotiations with SLA Entities.

The ENA states that during the 36-month exclusive negotiating period City "shall not negotiate with or consider any offers or solicitations from, any person or entity, other than the Developer, regarding a proposed DDA for the sale, lease, disposition, and/or development of the City Parcels or Agency Parcels ...." (JA 27.) Among other obligations, the ENA required Murphy's Bowl to make a non-refundable deposit with City in the amount of $1,500,000. (JA 31.)

As discussed above, Petitioner does not show that the current SLA requires disposing agencies to give SLA Entities a right of first offer. Petitioner cites no language from the SLA that prevents agencies from receiving offers for surplus land from private parties. Also, the SLA expressly disavows control over the price charged by an agency for its land. (Gov. Code § 54226.) While the SLA permits the agency to sell the land for less than fair market value, the SLA "does not require the disposing agency to sell the surplus land at less than its fair market value." (Flanders Foundation v. City of Carmel-By-The-Sea (2012) 202 Cal.App.4th 603, 615, fn. 7.) Thus, it seems consistent with section 54222 for a disposing agency to give SLA Entities a right of first

refusal, even if negotiations with a private party may have driven up the price for the Property.

Finally, even if the ENA leads to an offer from Murphy's Bowl to acquire the Property, Petitioner cites no evidence or contractual terms that would prevent City from complying with the SLA prior to entering a final sale agreement with Murphy's Bowl. While Petitioner argues that SLA negotiations by City at that point would not be in good faith, the court is not persuaded that the evidence supports that conclusion. Moreover, Petitioner's argument is premised largely on the assumption that the SLA requires the agency to give a right of first offer to the SLA Entities. The court rejects that assumption for the reasons stated above.

Based on the foregoing, Petitioner does not show that City has a clear, present, and ministerial duty to comply with the SLA with respect to the Property. Even if City could exercise its discretion to comply with the SLA at this time, Petitioner has not shown that City has abused its discretion in declining to do so during the negotiation period of the ENA.

The first cause of action is DENIED IN ITS ENTIRETY.

Second Cause of Action – Housing Element Law

Petitioner has dismissed the second cause of action without prejudice.

Third Cause of Action – CRL Replacement Obligation

In the third cause of action, Petitioner seeks a writ directing City to adopt and implement a Replacement Housing Plan for the units affordable to very-low income households that Respondents are obligated to replace due to redevelopment activity. (Proposed order.) In the petition, Petitioner seeks a writ directing City's Housing Successor or Successor Agency to: "(a) Construct or cause to be constructed, at minimum, 112 dwelling units affordable to households with low or very low income as required pursuant to Government Code Section 33413; (b) adopt a replacement housing plan to provide for the construction of the required dwelling units." (FAP p. 28.)

The community redevelopment law (CRL) required low and moderate-income housing removed as part of a redevelopment agency's project to be replaced within four years. (See Oppo. 48; Health & Safety Code § 33413(a).) All redevelopment agencies dissolved as a matter of law on February 1, 2012, pursuant to legislation that amended the CRL. Assembly Bill 26, enacted in 2011, "discontinued the requirement that agencies and their successors provide support for low-

and moderate-income housing. (§§ 34163, subd. (c)(4), 34176, subd. (d), 34176.1.)" (Macy v. City of Fontana (2016) 244 Cal.App.4th 1421, 1432.) Nonetheless, some "enforceable obligations" of redevelopment agencies continued after dissolution of the CRL. (See Health & Safety Code § 34171(d) [defining "enforceable obligations"]; see § 34177 [duties of successor agencies].)

Petitioner contends that City violated the CRL by: (1) failing to provide the required number of replacement units; and (2) failing to adopt a replacement housing plan per Health & Safety Code section 33413.5. City responds that this cause of action is moot. As stated in its answer: "As of 2017, the City in conjunction with the Inglewood Housing Authority, has already replaced 286 of the 398 housing units in accordance with this obligation; and more low income housing units have been replaced since 2017. The City is improving its low income housing situation and will soon have replaced every one of the removed units." (Answer p. 7.) City also submits the declaration of Mindy Wilcox, City's planning manager, who declares that City has dozens of affordable housing projects underway, sufficient to replace the 112 dwelling units that Petitioner contends its lacking. (Wilcox Decl. ¶ 16.)

Further complicating matters, the Department of Finance ("DOF") argues in its amicus curiae brief that the DOF, not this court, has primary jurisdiction over claims made in Petitioner's third cause of action. Specifically, DOF argues that "the Dissolution Law requires that DOF have the opportunity to make the initial determination of whether something is or is not an enforceable obligation, and challenges to DOF's determination may be brought only [in] the Superior Court for the County of Sacramento." (Amicus Curiae Brief at 9; see Health & Safety Code § 34168(a), § 34177, § 34179.) Petitioner has not responded to DOF's jurisdictional argument.

For several independent reasons, Petitioner has not shown that it is entitled to a writ for the third cause of action. Petitioner specifically argues that "replacement housing" is an "enforceable obligation" under the Dissolution Law. (OB 25.) Petitioner has not refuted DOF's contention that there is a detailed statutory process for DOF to determine whether a replacement housing obligation is an "enforceable obligation." (See e.g. §§ 34177, 34719.) 9 Even if not viewed as jurisdictional, there is an adequate remedy in this statutory process. A writ from this court is unnecessary since this statutory process has not been exhausted. (See CCP § 1086.)

Petitioner also has not provided a sufficient discussion of the CRL and Dissolution Law. The court finds Petitioner's terse briefing with respect to this complex area of statutory law to be insufficient. (See OB 23-26; Reply 27-29; Nelson v. Avondale HOA (2009) 172 Cal.App.4th 857, 862-863 [argument waived if not supported by reasoned argument].) To the extent

Petitioner makes entirely new arguments about the CRL or Dissolution Law in reply, the court disregards those arguments. New issues raised in reply are improper and may be disregarded. (Regency Outdoor Advertising v. Carolina Lances, Inc. (1995) 31 Cal.App.4th 1323, 1333.)

Finally, the evidence shows that City has taken sufficient steps to address the alleged, and entire, 112-unit deficiency. (Wilcox Decl. ¶¶ 15-16; Ans. p. 7.) While the court would not necessarily characterize the action as moot, Petitioner has not shown a clear, present, and ministerial duty owed by City.

The third cause of action is DENIED.

Fourth Cause of Action – Land Use Non-Discrimination Law

Petitioner contends that City's violations of the SLA, CRL, and Housing Element law also support a claim for discrimination under Government Code section 65008(b)(1)(C). (See OB 26-29; FAP ¶ 124.)

Section 65008(b)(1)(C) provides: "No city, county, city and county, or other local governmental agency shall, in the enactment or administration of ordinances pursuant to any law, including this title, prohibit or discriminate against any residential development or emergency shelter for any of the following reasons: … (C) Because the development or shelter is intended for occupancy by persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or persons and families of middle income."

As argued in opposition, the fourth cause of action fails for several reasons. (See Oppo. 48-50.) As Petitioner admits, the fourth cause of action is derivative of the first, second, and third causes of action. For the reasons stated above, the fourth cause of action also fails. Section 65008(b)(1)(C) only applies to the "the enactment or administration of ordinances." Petitioner does not challenge the enactment or administration of a City ordinance. Rather, as presented, the claim focuses on City's decision to enter the ENA. (OB 27.) Finally, Petitioner presents insufficient evidence of discriminatory intent. Petitioner argues for discriminatory intent primarily based on violations of the SLA; as discussed, the SLA claim is not persuasive.

The fourth cause of action is DENIED.

Fifth and Sixth Causes of Action

At the trial setting conference, held September 27, 2018, the court stayed the fifth and sixth causes of action, which are non-writ causes of action, until the writ causes of action are resolved.

The fifth cause of action seeks a permanent injunction, and the sixth cause of action seeks declaratory relief. (See FAP ¶¶ 128-144.) At trial, Counsel for the parties agreed that both causes of action are derivative of the substantive allegations made in the writ claim. As such, the fifth and sixth causes of action are dismissed based upon the court's ruling on causes of action one, three and four.

Conclusion

The first, third, and fourth causes of action are DENIED.

Petitioner dismissed the second cause of action without prejudice.

The fifth and sixth causes of action are DISMISSED.

FOOTNOTES:

1- City and Murphy's Bowl may be referred to collectively as "Respondents".
2- The parties' revised stipulation and protective order, file 9/3/19, requires the parties to comply with Rule 2.550(d), except for discovery motions. (See Stip., ¶ 20.) Moreover, sealing cannot be permitted by stipulation. (CRC 2.551(a).)
3- Respondents have not challenged Petitioner's standing for its writ causes of action. (See Opening Brief 11.)
4- Unless otherwise stated, statutory references are to the Government Code.
5- DNL "represents a person's cumulative exposure to sound from aircraft operations in a particular area spread across a 24-hour period." (Maurice Decl. ¶ 24.)
6- The SLA was amended in October 2019. Although the amended version does not apply to the ENA, it now defines "agency's use."
7- In a footnote, Respondents contend that their interpretation of "surplus land" is also supported by the express exclusion of "property being held by the agency for the purpose of exchange." (Oppo. 22, fn. 12.) The word "exchange" in this context suggests an exchange of property for other property, and not for money. The court is not persuaded by this argument.
8- AB 1486 expressly states that the current statute applies to pre-existing agreements like the ENA. (See Oppo. 26, fn. 17; see § 54234(a) of AB 1486.)
9- Sections 34177 and 34719 are found in Part 1.85 of Division 24 of the Health & Safety Code.

BS172771 November 6, 2019
UPLIFT INGLEWOOD COALITION VS CITY OF INGLEWOOD ET AL 9:48 AM

Judge: Honorable Daniel S. Murphy CSR: None
Judicial Assistant: Nancy DiGiambattista ERM: None
Courtroom Assistant: None Deputy Sheriff: None

Section 34168(a) provides in part: "Notwithstanding any other law, any action contesting the validity of this part or Part 1.85 (commencing with Section 34170) or challenging acts taken pursuant to these parts shall be brought in the Superior Court of the County of Sacramento."

Petitioner's exhibit 1 is ordered returned forthwith to the party who lodged it, to be preserved unaltered until a final judgment is rendered in this case and is to be forwarded to the court of appeal in the event of an appeal.

Counsel for real party in interest is to prepare, serve and lodge the proposed judgment within ten days. The court will hold the proposed judgment ten days for objections unless a declaration is filed that it is approved by opposing counsel as to form and content.

A copy of this minute order is mailed via U.S. Mail to counsel of record.

Certificate of Mailing is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp **FILED** Superior Court of California County of Los Angeles 11/06/2019 Sherri R. Carter, Executive Officer / Clerk of Court By: Nancy DiGiambattista Deputy
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012	
PLAINTIFF/PETITIONER: Uplift Inglewood Coalition	
DEFENDANT/RESPONDENT: City of Inglewood et al	
CERTIFICATE OF MAILING	CASE NUMBER: BS172771

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (HEARING ON PETITION FOR WRIT OF MANDATE RULING ON SUBMITTED M...) of 11/06/2019 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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